

Clarisse Chung (SB#260894)
Crossroads Legal Group
800 W. El Camino Real Ste 180
Mountain View, CA 94040
(650) 332-4905
clarisse@crossroadslegalgroup.com
Attorneys for Plaintiff

Michael Yesk (SB#130056)
Yesk Law
70 Doray Drive, Suite 16
Pleasant Hill, CA 94523
(925) 849-5525
yesklaw@gmail.com
Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

GEORGE B. NOBLE AND PATRICIA L.
NOBLE,

Plaintiff,

v.

CALIBER HOME LOANS, INC.; U.S. BANK
TRUST, N.A. AS TRUSTEE FOR LSF9
MASTER PARTICIPATION TRUST; LSF9
MORTGAGE HOLDINGS, LLC; CLEAR
RECON CORP.; BANK OF AMERICA,
N.A.; and DOES 1-10, INCLUSIVE,

Defendants.

Case No: 4:17-cv-01053

FIRST AMENDED COMPLAINT:

- 1) **Violations of the Real Estate Settlement Procedures Act (12 U.S.C. 2605);**
- 2) **Violations of California Civil Code Section 2924.17; and**
- 3) **Wrongful Foreclosure.**

JURY TRIAL DEMANDED

COMES NOW the Plaintiffs GEORGE B. NOBLE AND PATRICIA L. NOBLE,
complaining against the Defendants, and each of them, as follows:

INTRODUCTION

1. This is an action brought by Plaintiff GEORGE B. NOBLE AND PATRICIA L. NOBLE ("Plaintiffs") against Defendants, and DOES 1-10, INCLUSIVE, for violations of the

Real Estate Settlement Procedures Act (“RESPA”); California Civil Code Sections 2924.17; and wrongful foreclosure. Plaintiffs seek damages along with declaratory and injunctive relief.

2. Plaintiffs allege that Defendants violated multiple RESPA provisions, causing Plaintiffs to incur actual damages and emotional distress.

3. Plaintiffs also allege on information and belief that Defendants are attempting to wrongfully foreclose on their home despite lacking standing to do so.

4. Plaintiff further alleges that Defendants violated provisions of the California Homeowner Bill of Rights (“HBOR”).

5. Plaintiff alleges that an actual controversy has arisen and now exists between Plaintiff and Defendants.

PARTIES

6. At all relevant times, Plaintiffs GEORGE B. NOBLE AND PATRICIA L. NOBLE owned the Subject Property, located at 56 Hennessey Ridge Road, St. Helena, California 94574.

7. Plaintiffs allege on information and belief that Defendant CALIBER HOME LOANS, INC., (“Defendant” or “Caliber”) is a corporation organized under the laws of Delaware and authorized to do business in California.

8. Plaintiffs allege on information and belief that Defendant BANK OF AMERICA, N.A. (“BANA” or “Defendant”) is a national bank organized under the laws of the United States and doing business in California.

9. Plaintiffs allege on information and belief that Defendant U.S. BANK TRUST, N.A. (“U.S. Bank Trust” or “Defendant”) is a subsidiary of U.S. Bank, N.A., a national bank organized under the laws of the United States and doing business in California.

10. Plaintiffs allege on information and belief that Defendant LSF9 Mortgage Holdings, LLC (“LSF9 Holdings” or “Defendant”) is a limited liability company organized under the laws of Texas.

1 11. Plaintiffs allege on information and belief that Defendant Clear Recon Corp.
2 ("Clear Recon" or "Defendant") is a corporation organized under the laws of California.

3 12. The true names and capacities of Defendants sued herein as DOES 1-10,
4 INCLUSIVE, are unknown to Plaintiff, who therefore sues them by such fictitious names.
5 Plaintiffs will amend this Complaint to state the true names and capacities of these Defendants
6 once they have been ascertained.

7 **VENUE AND JURISDICTION**

8 13. This action is of a civil nature. Plaintiffs alleges on information and belief that
9 this Court has jurisdiction over this case pursuant to 28 U.S.C. § 1331.

10 14. Venue is proper pursuant to 28 U.S.C. 1391(b)(2) because the Subject Property is
11 located in Napa County, California.

12 **STATEMENT OF FACTS**

13 15. On or around 2007, Plaintiffs took out a loan with the now-defunct Countrywide
14 Home Loans, Inc. ("Countrywide"). Plaintiffs executed a Promissory Note ("Note") and a Deed
15 of Trust ("DOT") to secure the loan.

16 16. On or around November 22, 2011, Mortgage Electronic Registration Systems,
17 Inc. ("MERS") recorded a Corporation Assignment of Deed of Trust, assigning all beneficial
18 interest in Plaintiffs' DOT together with the note to Defendant Bank of America, N.A. ("BANA"
19 or "Defendant").

20 17. On or around April 4, 2014, Defendant BANA purported to substitute Clear
21 Recon Corp. in as trustee of Plaintiffs' DOT in place of Recontrust Company, N.A.

22 18. On or around this time, Plaintiffs began exploring the possibility of obtaining a
23 loan modification with Defendant BANA. To this end, they submitted a complete loan
24 modification application. Plaintiffs also repeatedly and promptly responded to BANA's
25 additional requests for information and documentation in support of Plaintiffs' application.

26 19. On or around November 2014, BANA representatives informed Plaintiffs that the

1 servicing of their loan would be transferred to a third party, but also assured Plaintiffs that the
2 new servicer would continue to process the complete loan modification application Plaintiffs
3 already submitted to BANA.

4 20. On or around November 6, 2014, Michael D. Fitts as a purported “Assistant Vice
5 President” of BANA executed an Assignment of Deed of Trust in which BANA purported to
6 assign all beneficial interest in Plaintiffs’ DOT to LSF9 Mortgage Holdings, LLC. Though
7 “Bank of America, N.A.” was printed on the signature line of the Assignment of Deed of Trust,
8 “Michael D. Fitts” and “Assistant Vice President” were handwritten on the document.

9 21. On November 7, 2014, Plaintiffs sent BANA a qualified written request (“QWR”)
10 for information under 12 U.S.C. 2605(e) and 12 C.F.R. 1024.36. Plaintiffs’ QWR reasonably
11 identified Plaintiffs’ names as the borrowers on the account and also identified Plaintiffs’ loan
12 account. Among other things, Plaintiffs sought information relating to the identity of the owner
13 of their mortgage; the transfer history of their loan; and their servicing file.

14 22. BANA’s response to Plaintiffs’ request for information (“RFI”) contained
15 numerous deficiencies, including but not limited to the following:

- 16 • BANA failed to supply Plaintiffs with the name, address and telephone number of
17 the trustee overseeing the issuing entity;
- 18 • BANA failed to supply Plaintiffs with the name, address, telephone number, and
19 position of an officer under the trustee’s employ;
- 20 • BANA did not provide Plaintiffs with a loan identification number that was
21 assigned to their loan and through which the trustee would recognize Plaintiffs’
22 loan account;

23 23. BANA also refused to supply information relating to the transfer history of
24 Plaintiffs’ loan by failing to respond to Plaintiffs’ request for the MERS MIN Summary and a
25 MERS Milestones Report. This is despite the fact that Plaintiffs informed BANA in its RFI that
26 Plaintiffs were unable to find their loan on the MERS system using the MIN number listed on

1 their Deed of Trust.¹

2 24. BANA's response to Plaintiffs' request for information regarding their servicing
3 file was also incomplete. Among other things, BANA refused to send a servicing file that
4 reflected the most recent data and sent outdated servicing notes that did not even reflect the fact
5 that Plaintiffs had engaged BANA for loss mitigation review. Some information and documents
6 provided only covered activity on Plaintiffs' account up to January 1, 2014.

7 25. On November 20, 2014, Plaintiffs – who had been informed that Defendant
8 Caliber Home Loans, Inc. ("Caliber" or "Defendant") was the new servicer of their loan – sent
9 Caliber a request for information under 12 U.S.C. 2605(e) and 12 C.F.R. 1024.36. Plaintiffs'
10 QWR reasonably identified Plaintiffs' names as the borrowers on the account and also identified
11 Plaintiffs' loan account. Among other things, Plaintiffs sought information relating to the identity
12 of the owner of their mortgage; the transfer history of their loan; and their servicing file.

13 26. Caliber's response was due on December 8, 2014 but was not mailed by Caliber
14 until December 31, 2014. Caliber's response to Plaintiffs' RFI also contained numerous
15 deficiencies, including but not limited to the following:

- 16 • Caliber failed to supply Plaintiffs with the name, address, telephone number, and
17 position of an officer under the trustee's employ;
- 18 • Caliber did not provide Plaintiffs with a loan identification number that was
19 assigned to their loan and through which the trustee would recognize Plaintiffs'
20 loan account;

21 27. Caliber also refused to supply information relating to the transfer history of
22 Plaintiffs' loan by failing to respond to Plaintiffs' request for the MERS MIN Summary and a
23 MERS Milestones Report. Though Caliber stated in its letter that it would contact Plaintiffs'
24 prior servicer and send supplemental information once it had been obtained from the prior
25

26 ¹ Though Plaintiffs were able to find what appeared to be their Deed of Trust on the MERS system by performing a
searching using George Noble's social security number and property zip code, the record number associated with
that MIN was *not* the MIN listed on Plaintiffs' Deed of Trust.

1 servicer, Plaintiffs received no further communication from Caliber regarding this request.

2 28. Caliber's response to Plaintiffs' request for information regarding their servicing
3 file was also incomplete. Among other things, Caliber refused to send a servicing file that
4 reflected the most recent data and refused to provide some of the information Plaintiffs requested
5 related to the Transaction History on their loan.

6 29. Caliber also refused to send Plaintiffs any of the notes created by its servicing
7 personnel that reflected communications with Plaintiffs about their loan, claiming that "[t]he
8 information sought...was proprietary information and [would] not be provided."

9 30. In response to Plaintiffs' request for information regarding the owner of their
10 mortgage, Caliber claimed that the investor of Plaintiffs' loan was U.S. Bank Trust, N.A. as
11 Trustee for LSF9 Master Participation Trust.

12 31. Plaintiffs allege on information and belief that the LSF9 Master Participation
13 Trust was merely a participation agent to the securitization of Plaintiffs' loan. As such and based
14 on an investigation Plaintiffs had conducted on the ownership of their loan, Plaintiffs further
15 allege that the LSF9 Master Participation Trust is not the beneficiary of Plaintiffs' deed of trust
16 because it does not own the entirety of Plaintiffs' loan but rather only a forward interest in its
17 servicing rights.

18 32. Plaintiffs allege on information and belief that the LSF9 Master Participation
19 Trust therefore lacks the authority and standing to initiate foreclosure proceedings on Plaintiffs'
20 home.

21 33. Notwithstanding this fact, the LSF9 Master Participation Trust has been
22 attempting to foreclose on the Subject Property.

23 34. On or around, February 10, 2017, Plaintiffs received a notice of trustee's sale,
24 noticing a sale date of March 15, 2017.

1 **FIRST CAUSE OF ACTION: VIOLATION OF 12 U.S.C. § 2605 (“RESPA”)**

2 **(Against Defendants Caliber and BANA)**

3 35. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as
4 though fully set forth hereafter.

5 36. Plaintiffs submitted a qualified written request (“QWR”) to Defendants Caliber
6 and BANA under 12 U.S.C. 2605(e) and 12 C.F.R. 1024.36. Plaintiffs’ QWRs reasonably
7 identified Plaintiffs’ names as the borrowers on the account and also identified Plaintiffs’ loan
8 account.

9 37. 12 U.S.C. 2605(e) required Defendants to provide Plaintiffs with a written
10 response that “includes information requested by the borrower or an explanation of why the
11 information requested is unavailable or cannot be obtained by the servicer.” Similarly, 12 C.F.R.
12 1024.36 required Defendants to provide Plaintiffs with either the information requested by
13 Plaintiffs; or a written notification that the information requested was unavailable to the servicer
14 along with the basis for that determination and contact information for further assistance.

15 38. Defendant BANA violated 12 U.S.C. 2605(e) and 12 C.F.R. 1024.36 by failing to
16 provide numerous pieces of information requested by Plaintiffs in their November 7, 2014 RFI.
17 Among other things, BANA’s response failed to supply Plaintiffs with the name, address and
18 telephone number of the trustee overseeing the issuing entity; failed to supply Plaintiffs with the
19 name, address, telephone number, and position of an officer under the trustee’s employ; did not
20 provide Plaintiffs with a loan identification number that was assigned to their loan and through
21 which the trustee would recognize Plaintiffs’ loan account; refused to supply information relating
22 to the transfer history of Plaintiffs’ loan by failing to respond to Plaintiffs’ request for the MERS
23 MIN Summary and a MERS Milestones Report (despite the fact that Plaintiffs informed BANA
24 in its RFI that Plaintiffs were unable to find their loan on the MERS system using the MIN
25 number listed on their Deed of Trust); refused to send a servicing file that reflected the most
26

1 recent data; and sent outdated servicing notes that did not even reflect the fact that Plaintiffs had
2 engaged BANA for loss mitigation review.

3 39. Defendant Caliber violated 12 U.S.C. 2605(e) and 12 C.F.R. 1024.36 by failing to
4 provide numerous pieces of information requested by Plaintiffs in their November 20, 2014 RFI.
5 Among other things, Caliber's response failed to Plaintiffs with the name, address, telephone
6 number, and position of an officer under the trustee's employ; did not provide Plaintiffs with a
7 loan identification number that was assigned to their loan and through which the trustee would
8 recognize Plaintiffs' loan account; refused to supply information relating to the transfer history
9 of Plaintiffs' loan by failing to respond to Plaintiffs' request for the MERS MIN Summary and a
10 MERS Milestones Report²; refused to send a servicing file that reflected the most recent data;
11 refused to provide some of the information Plaintiffs requested related to the Transaction History
12 on their loan; and refused to send Plaintiffs any of the notes created by its servicing personnel
13 that reflected communications with Plaintiffs about their loan, claiming that "[t]he information
14 sought...was proprietary information and [would] not be provided."

15 40. Caliber further violated 12 U.S.C. 2605(e) by responding to Plaintiffs' QWR
16 nearly a month after their response was due.

17 41. Defendants' deficient responses to Plaintiffs' QWRs and their failure to provide
18 numerous items of requested information relating to the servicing and chain of ownership on
19 Plaintiffs' note violated 12 U.S.C. 2605(e) of the Real Estate Settlement and Procedures Act
20 ("RESPA") and 12 C.F.R. 1024.36.

21 42. Defendants' conduct caused Plaintiffs actual damages as they continued to fight
22 against foreclosure by an entity that raised, for Plaintiffs, serious questions about the entity's
23 right to foreclose. Plaintiffs also suffered emotional distress as Defendants continued to leave
24

25 ² Though Caliber stated in its response that it would contact Plaintiffs' prior servicer regarding
26 Plaintiffs' request for the MERS MIN summary and send supplemental information once it had
obtained such information from the prior servicer, Plaintiffs received no further communication
from Caliber regarding this request

1 Plaintiffs hanging, failing to clarify and solidify the standing of Defendants to foreclose through
2 an adequate response to Plaintiffs' QWR.

3 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, set
4 forth below:

5 **SECOND CAUSE OF ACTION: VIOLATION OF CALIFORNIA CIVIL CODE § 2924.17**

6 **(Against All Defendants)**

7 43. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as
8 though fully set forth hereafter.

9 44. California Civil Code Section 2924.17 ("Section 2924.17") requires a "notice of
10 default, notice of sale, assignment of a deed of trust, or substitution of trustee recorded by or on
11 behalf of a mortgage servicer in connection with a foreclosure... [to be] *accurate and complete*
12 and supported by competent and reliable evidence." Cal. Civ. Code § 2924.17(a). Subsection (b)
13 of Section 2924.17 further requires a mortgage servicer to "ensure that it has reviewed competent
14 and reliable evidence to substantiate the borrower's default *and the right to foreclose.*" *See Id.*
15 (emphasis added)

16 45. Plaintiff alleges on information and belief that beginning on or around 2014, the
17 LSF9 Master Participation Trust has been attempting to foreclose on Plaintiffs' home. These
18 foreclosure attempts have been presumably based on an Assignment of Deed of Trust Defendant
19 BANA purportedly executed and recorded on November 6, 2014, in which an alleged "Assistant
20 Vice President" of BANA (Michael D. Fitts) purported to assign all beneficial interest in
21 Plaintiffs' Deed of Trust to LSF9 Mortgage Holdings, LLC.

22 46. Later, in response to the QWR Plaintiffs sent to Defendant Caliber on November
23 20, 2014, Caliber represented to Plaintiffs that the investor of Plaintiffs' loan was Defendant U.S.
24 Bank Trust, N.A. as Trustee for LSF9 Master Participation Trust.

25 47. Plaintiffs allege on information and belief that the LSF9 Master Participation
26 Trust was merely a participation agent to the securitization of Plaintiffs' loan. As such and based

1 on an investigation Plaintiffs had conducted on the ownership of their loan, Plaintiffs further
2 allege that the LSF9 Master Participation Trust is not the beneficiary of Plaintiffs' deed of trust
3 because it does not own the entirety of Plaintiffs' loan but rather only a forward interest in its
4 servicing rights.

5 48. Plaintiffs also allege on information and belief that Michael D. Fitts (whose name
6 and title was handwritten into the Assignment of Deed of Trust) was not, in fact, an "Assistant
7 Vice President" of BANA but rather a Foreclosure Specialist as listed on his online LinkedIn
8 profile page.

9 49. As such, Defendant BANA violated Section 2924.17 when it recorded the
10 November 6, 2014 Assignment of Deed of Trust, stating that the LSF9 Mortgage Holdings, LLC,
11 was the new holder of beneficial interest in Plaintiffs' deed of trust when, in fact, the LSF9
12 Master Participation Trust only owned a forward interest in its servicing rights on Plaintiffs'
13 mortgage – both because the LSF9 was not in fact the true beneficiary of the deed of trust and
14 because the individual who executed the assignment of deed of trust in favor of the trust's favor
15 was a robo-signer and not an actual assistant vice president of BANA.

16 50. The remaining defendants each violated Section 2924.17 when they subsequently
17 recorded notices of default and notices of trustee's sale without reviewing competent and reliable
18 evidence to substantiate the borrower's default *and the right to foreclose*.

19 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, set
20 forth below:

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

- 23 1. For a declaration of the rights of the parties with respect to the Subject Property;
24 2. For a temporary restraining order, preliminary injunction, and permanent
25 injunction to prevent Defendants and their agents, servants, and employees, and all persons
26

1 acting under, in concert with, or for Defendants, from asserting any interest in the Subject
2 Property or otherwise attempting in any manner to dispossess Plaintiffs of the Subject Property;

3 3. For damages according to proof at trial;

4 4. For costs of suit and attorneys' fees herein incurred; and

5 5. For such other relief as the Court may deem just and proper.

6 **DEMAND FOR JURY TRIAL**

7 Plaintiff hereby demands a trial by jury of each and every claim so triable.

8
9 DATED: August 15, 2017

/s/ Clarisse Chung

Clarisse Chung

Crossroads Legal Group

Michael Yesk

Yesk Law

Attorneys for Plaintiff